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5

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,971	07/14/2003	Richard J. Dibbs	17306/107	5927
26646	7590	05/12/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			VAN, QUANG T	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,971

Applicant(s)

DIBBS, RICHARD J.

Examiner

Quang T Van

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-56 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 50-55 is/are rejected.
- 7) ☒ Claim(s) 56 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/14/03 & 09/16/03
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Specification

1. The specification is objected to because of the following informalities: "The present application is related to U.S. Patent Application Serial No. _____, entitled ""Egg Handling Pasteurization Apparatus and Method," bearing Attorney Docket No. 17306/106" recited in CROSS-REFERENCE TO RELATED APPLICATIONS, lines 5-7 is incomplete information and should be changed to "The present application is related to U.S. Patent Application Serial No. 10/618,790, entitled ""Egg Handling Pasteurization Apparatus and Method," bearing Attorney Docket No. 17306/106". Correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 50, 52, 53 and 54 are rejected under 35 U.S.C. 102(e) as being anticipated by Polster (US 6,187,348). Polster discloses a process for heat treating food product comprising an oven (col. 7, lines 39-51) configured to increase a temperature of an in-shell egg to a first predetermined temperature is a range of between 120°F and 140°F for a predetermined time interval (col. 10, lines 9-14).

4. Claims 50-55 are rejected under 35 U.S.C. 102(e) as being anticipated by Ball et al (US 6,455,094) cited by applicant. Ball discloses a treatment of food product using humidity controlled air comprising an oven (col. 8, lines 1-10) configured to increase a temperature of an in-shell egg to a first predetermined temperature is a range of between 120⁰F and 140⁰F for a predetermined time interval (col. 5, lines 5-15 and table 1).

5. Claim 56 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not show or suggest a packer configured to pack the in-shell egg and a grader configured to grade the in-shell egg, wherein the oven is arranged between the packer and the grader as recited in claim 56.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Cox et al (US 5,431,939) discloses hyperpasteurization of food. Funk (US 2,423,233) discloses a process for preserving eggs for edible consumption.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T Van whose telephone number is 703-306-9162. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on 703-308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QV
May 10, 2004



Quang T Van
Primary Examiner
Art Unit 3742